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Attorneys for Defendant
Bitmain Technologies, Ltd.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

GOR GEVORKYAN, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

BITMAIN TECHNOLOGIES, LTD., and
DOES 1 to 10,

Defendants.

Case No. 3:18-cv-07004-JD

Judge: Hon. James Donato

**DEFENDANT BITMAIN
TECHNOLOGIES, LTD.'S ANSWER
TO PLAINTIFF'S FIRST AMENDED
CLASS ACTION COMPLAINT**

Trial Date: March 11, 2024

1 **ANSWER**

2 Pursuant to Federal Rules of Civil Procedure 7 and 8, Bitmain Technologies, Ltd.
3 (“defendant” or “Bitmain”) answers plaintiff’s First Amended Class Action Complaint
4 (“Complaint”) as follows:

5 Except as expressly admitted below, defendant denies each allegation against it and denies
6 liability to the plaintiff. To the extent the headings in the Complaint purport to state facts to which
7 a response is required, defendant denies each such allegation. The headings in the Complaint are
8 repeated below for organizational purposes only. Defendant expressly reserves the right to seek to
9 amend and/or supplement this Answer as may be necessary.

10 **“NATURE OF ACTION”**

11 1. Paragraph 1 consists of legal arguments or conclusions to which no response is
12 required. To the extent any response is required, defendant denies each and every allegation in
13 Paragraph 1 except as follows: defendant admits that plaintiff brings this action as a putative
14 class action, and defendant markets and sells cryptocurrency mining devices known as
15 Application Specific Integrated Circuit devices (“ASIC devices” and the “Products”). Defendant
16 further denies that a class may be properly certified under Rule 23 (or any other rule).

17 2. Defendant admits that it has sold the following ASIC devices: S7 Series; S9
18 Series; S11 Series; S15 Series; S17 Series; A3 Series; B3 Series; B7 Series; D5 Series; DR
19 Series; DR5 Series; E3 Series; R4 Series; G2 Series; L3 Series; T9 Series; Z9 Series; T15 Series;
20 T17 Series; V9 Series; X3 Series; Z9 Series; and Z11 Series. Defendant denies the remaining
21 allegations in Paragraph 2. Defendant further denies that a class may be properly certified under
22 Rule 23 (or any other rule).

23 3. Defendant denies the allegations in Paragraph 3.

24 4. Paragraph 4 consists of legal arguments or conclusions to which no response is
25 required. To the extent any response is required, defendant denies the allegations.

26 5. Paragraph 5 consists of legal arguments or conclusions to which no response is
27 required. To the extent any response is required, defendant denies the allegations.
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1 further denies each and every allegation in Paragraph 15, including that a class may be properly
2 certified under Rule 23 (or any other rule).

3 **“FACTUAL ALLEGATIONS”**

4 **A. “CryptoCurrency”**

5 16. Defendant admits that “cryptocurrency is a form of digital currency.” Defendant
6 lacks sufficient knowledge or information to form a belief as to the truth or falsity of the
7 remaining allegations in Paragraph 16 and, on that basis, denies them.

8 17. Defendant lacks sufficient knowledge or information to form a belief as to the
9 truth or falsity of the allegations in Paragraph 17 and, on that basis, denies them.

10 18. Defendant lacks sufficient knowledge or information to form a belief as to the
11 truth or falsity of the allegations in Paragraph 18 and, on that basis, denies them.

12 19. Defendant lacks sufficient knowledge or information to form a belief as to the
13 truth or falsity of the allegations in Paragraph 19 and, on that basis, denies them. To the extent
14 that Paragraph 19 purports to summarize, interpret, or quote from the cited webpage, defendant
15 avers that the material speaks for itself, and defendant denies any characterization of the material
16 that is inconsistent with its contents. Defendant denies the remaining allegations in Paragraph 19.

17 20. Defendant denies the allegations in Paragraph 20 except as follows: defendant
18 admits that people may mine virtual currencies using computing power.

19 21. Defendant denies the allegations in Paragraph 21 except as follows: defendant
20 admits that virtual currency may be stored in a digital wallet.

21 22. Defendant denies the allegations in Paragraph 22.

22 23. Defendant denies the allegations in Paragraph 23 except as follows: defendant
23 admits that “[a] mining pool is the pooling of resources by virtual currency miners.”

24 24. Defendant lacks sufficient knowledge or information to form a belief as to the
25 truth or falsity of the allegations in Paragraph 24 and, on that basis, denies them.

26 25. Defendant lacks sufficient knowledge or information to form a belief as to the
27 truth or falsity of the allegations in Paragraph 25 and, on that basis, denies them.

28 26. Defendant lacks sufficient knowledge or information to form a belief as to the

1 truth or falsity of the allegations in Paragraph 26 and, on that basis, denies them.

2 27. Defendant lacks sufficient knowledge or information to form a belief as to the
3 truth or falsity of the allegations in Paragraph 27 and, on that basis, denies them.

4 28. Defendant lacks sufficient knowledge or information to form a belief as to the
5 truth or falsity of the allegations in Paragraph 28 and, on that basis, denies them.

6 **B. “Bitmain ASIC Devices”**

7 29. Defendant admits that it was founded in 2013 and that it markets and sells ASIC
8 devices internationally. Defendant lacks sufficient knowledge or information to form a belief as
9 to the truth or falsity of the remaining allegations in Paragraph 29 and, on that basis, denies them.

10 30. Defendant lacks sufficient knowledge or information to form a belief as to the
11 truth or falsity of the allegations in Paragraph 30 and, on that basis, denies them.

12 31. Defendant admits that its business generates revenue from the sales of
13 cryptocurrency mining hardware. Defendant denies the remaining allegations in Paragraph 31.

14 32. Defendant denies the allegations in Paragraph 32.

15 33. Defendant denies the allegations in Paragraph 33.

16 34. Defendant denies the allegations in Paragraph 34.

17 35. Defendant denies the allegations in Paragraph 35.

18 36. Defendant denies the allegations in Paragraph 36.

19 37. Defendant admits that it markets and sells ASIC devices. Defendant denies the
20 remaining allegations in Paragraph 37.

21 38. Defendant denies the allegations in Paragraph 38.

22 **C. “Bitmain Uses Its Customers’ Purchased ASIC Devices to Mine Bitcoin for Itself**
23 **Prior to Delivery to the Customers”**

24 39. Defendant admits that it sells cryptocurrency mining hardware online. Defendant
25 denies the remaining allegations in Paragraph 39.

26 40. Defendant denies the allegations in Paragraph 40.

27 41. Defendant denies the allegations in Paragraph 41.

28 42. Defendant lacks sufficient knowledge or information to form a belief as to the

1 truth or falsity of the allegations in Paragraph 42 and, on that basis, denies them.

2 43. Defendant admits it provides its customers with an anticipated delivery date.
3 Defendant denies the remaining allegations in Paragraph 43.

4 44. Defendant denies the allegations in Paragraph 44.

5 45. Defendant denies the allegations in Paragraph 45.

6 46. Paragraph 46 consists of legal arguments or conclusions to which no response is
7 required. To the extent any response is required, defendant denies the allegations in Paragraph
8 46.

9 47. Defendant denies the allegations in Paragraph 47.

10 48. Defendant lacks sufficient knowledge or information sufficient to form a belief as
11 to the truth or falsity of the allegations in Paragraph 48 and, on that basis, denies them.

12 49. Defendant denies the allegations in Paragraph 49.

13 50. Defendant lacks sufficient knowledge or information to form a belief as to the
14 truth or falsity of the allegations in Paragraph 50 and, on that basis, denies them. To the extent
15 that Paragraph 50 purports to summarize, interpret, or quote from the cited webpage, defendant
16 avers that the material speaks for itself, and defendant denies any characterization of the material
17 that is inconsistent with its contents. Defendant denies the remaining allegations in Paragraph 50.

18 51. Defendant denies the allegations in Paragraph 51.

19 52. Defendant denies the allegations in Paragraph 52.

20 53. Defendant denies the allegations in Paragraph 53.

21 **D. “Bitmain Continues to Use Customer Purchased ASIC Devices to Mine Bitcoin for**
22 **Itself After Delivery to the Customer”**

23 54. Defendant lacks sufficient knowledge or information to form a belief as to the
24 truth or falsity of the allegations in Paragraph 54 and, on that basis, denies them. To the extent
25 that Paragraph 54 purports to summarize, interpret, or quote from some unidentified source,
26 defendant avers that the material speaks for itself, and defendant denies any characterization of
27 that material that is inconsistent with its contents. Defendant denies the remaining allegations in
28 Paragraph 54.

1 55. Paragraph 55 consists of legal arguments or conclusions to which no response is
2 required. To the extent any response is required, defendant denies the allegations in Paragraph
3 55.

4 56. Defendant denies the allegations in Paragraph 56.

5 57. Paragraph 57 consists of legal arguments or conclusions to which no response is
6 required. To the extent any response is required, defendant denies the allegations in Paragraph
7 57.

8 58. Defendant denies the allegations in Paragraph 58.

9 59. Defendant denies the allegations in Paragraph 59.

10 60. Defendant denies the allegations in Paragraph 60.

11 61. Defendant denies the allegations in Paragraph 61.

12 **E. "Plaintiff's Experience"**

13 62. Defendant admits that plaintiff Gor Gevorkian placed an order for ten Antminer
14 S9s in January 2018 and five Antminer S9s in February 2018. Defendant denies the remaining
15 allegations in Paragraph 62.

16 63. Defendant lacks sufficient knowledge or information to form a belief as to the
17 truth or falsity of the allegations in Paragraph 63 and, on that basis, denies them.

18 64. Defendant lacks sufficient knowledge or information to form a belief as to the
19 truth or falsity of the allegations in Paragraph 64 and, on that basis, denies them.

20 65. Defendant lacks sufficient knowledge or information to form a belief as to the
21 truth or falsity of the allegations in Paragraph 65 and, on that basis, denies them.

22 66. Paragraph 66 consists of legal arguments or conclusions to which no response is
23 required. To the extent any response is required, defendant denies the allegations.

24 67. Defendant denies the allegations in Paragraph 67.

25 68. Defendant denies the allegations in Paragraph 68.

26 69. Defendant lacks sufficient knowledge or information sufficient to form a belief as
27 to the truth or falsity of the allegation in the second sentence of paragraph 69 that "[i]t took him a
28 substantial amount of time to properly configure the ASIC devices." Defendant denies the

1 remaining allegations in Paragraph 69.

2 70. Defendant denies the allegations in Paragraph 70.

3 71. Defendant denies the allegations in Paragraph 71.

4 72. Defendant lacks sufficient knowledge or information to form a belief as to the
5 truth or falsity of the allegations in Paragraph 72 and, on that basis, denies them.

6 **“CLASS ACTION ALLEGATIONS”**

7 73. Paragraph 73 consists of legal arguments or conclusions to which no response is
8 required. Paragraph 73 purports to set forth descriptions of putative classes that plaintiff seeks to
9 certify and states legal conclusions to which no response is required. To the extent a response is
10 required, defendant denies that the requirements for class certification under Rule 23 (or any other
11 rule) can be satisfied in this action. To the extent the allegations in Paragraph 73 stand for any
12 additional propositions, they are denied.

13 74. Paragraph 74 purports to set forth descriptions of a putative subclass that plaintiff
14 seeks to certify and state legal conclusions to which no response is required. To the extent a
15 response is required, defendant specifically denies that the requirements for class certification
16 under Rule 23 (or any other rule) can be satisfied in this action. To the extent the allegations in
17 Paragraph 74 stand for any additional propositions, they are denied.

18 75. Paragraph 75 consists of legal arguments or conclusions to which no response is
19 required. To the extent any response is required, defendant denies the allegations, including that
20 the requirements for class certification under Rule 23 (or any other rule) can be satisfied in this
21 action.

22 76. Paragraph 76 consists of legal arguments or conclusions to which no response is
23 required. To the extent any response is required, defendant denies the allegations, including that
24 the requirements for class certification under Rule 23 (or any other rule) can be satisfied in this
25 action.

26 77. Paragraph 77 consists of legal arguments or conclusions to which no response is
27 required. To the extent any response is required, defendant denies the allegations and its
28 subparts, including that the requirements for class certification under Rule 23 (or any other rule)

1 can be satisfied in this action.

2 (a) Paragraph 77(a) consists of legal arguments or conclusions to which no
3 response is required. To the extent any response is required, defendant
4 denies the allegations, including that the requirements for class certification
5 under Rule 23 (or any other rule) can be satisfied in this action.

6 (b) Paragraph 77(b) consists of legal arguments or conclusions to which no
7 response is required. To the extent any response is required, defendant
8 denies the allegations, including that the requirements for class certification
9 under Rule 23 (or any other rule) can be satisfied in this action.

10 (c) Paragraph 77(c) consists of legal arguments or conclusions to which no
11 response is required. To the extent any response is required, defendant
12 denies the allegations, including that the requirements for class certification
13 under Rule 23 (or any other rule) can be satisfied in this action.

14 (d) Paragraph 77(d) consists of legal arguments or conclusions to which no
15 response is required. To the extent any response is required, defendant
16 denies the allegations, including that the requirements for class certification
17 under Rule 23 (or any other rule) can be satisfied in this action.

18 (e) Paragraph 77(e) consists of legal arguments or conclusions to which no
19 response is required. To the extent any response is required, defendant
20 denies the allegations, including that the requirements for class certification
21 under Rule 23 (or any other rule) can be satisfied in this action.

22 (f) Paragraph 77(f) consists of legal arguments or conclusions to which no
23 response is required. To the extent any response is required, defendant
24 denies the allegations, including that the requirements for class certification
25 under Rule 23 (or any other rule) can be satisfied in this action.

26 (g) Paragraph 77(g) consists of legal arguments or conclusions to which no
27 response is required. To the extent any response is required, defendant
28 denies the allegations, including that the requirements for class certification

1 under Rule 23 (or any other rule) can be satisfied in this action.

2 (h) Paragraph 77(h) consists of legal arguments or conclusions to which no
3 response is required. To the extent any response is required, defendant
4 denies the allegations, including that the requirements for class certification
5 under Rule 23 (or any other rule) can be satisfied in this action.

6 (i) Paragraph 77(i) consists of legal arguments or conclusions to which no
7 response is required. To the extent any response is required, defendant
8 denies the allegations, including that the requirements for class certification
9 under Rule 23 (or any other rule) can be satisfied in this action.

10 78. Paragraph 78 consists of legal arguments or conclusions to which no response is
11 required. To the extent any response is required, defendant denies the allegations. Defendant
12 further denies that a class may be properly certified under Rule 23 (or any other rule).

13 79. Paragraph 79 consists of legal arguments or conclusions to which no response is
14 required. To the extent any response is required, defendant denies the allegations. Defendant
15 further denies that a class may be properly certified under Rule 23 (or any other rule).

16 80. Paragraph 80 consists of legal arguments or conclusions to which no response is
17 required. To the extent any response is required, defendant denies the allegations. Defendant
18 further denies that a class may be properly certified under Rule 23 (or any other rule).

19 **First Cause of Action**

20 **Violation of Unfair Competition Law**

21 81. Defendants adopts and incorporates by references its response to Paragraphs 1-80
22 of the Complaint as if fully asserted herein.

23 82. Paragraph 82 consists of legal arguments or conclusions to which no response is
24 required. To the extent any response is required, defendant admits plaintiff purports to bring this
25 action as a class action and seeks to represent a purported class as stated, and defendant otherwise
26 denies the allegations in Paragraph 82. Defendant further denies that a class may be properly
27 certified under Rule 23 (or any other rule).

28 83. Paragraph 83 consists of legal arguments or conclusions to which no response is

1 required. To the extent any response is required, defendant admits that Paragraph 83 purports to
2 quote from Bus. & Pro. Code § 17200 *et seq.*, and that statute speaks for itself. Defendant
3 respectfully refers the Court to the full content of that statute.

4 84. Paragraph 84 consists of legal arguments or conclusions to which no response is
5 required. To the extent any response is required, defendant denies the allegations.

6 85. Paragraph 85 consists of legal arguments or conclusions to which no response is
7 required. To the extent any response is required, defendant denies the allegations. Defendant
8 further denies that a class may be properly certified under Rule 23 (or any other rule).

9 86. Paragraph 86 consists of legal arguments or conclusions to which no response is
10 required. To the extent any response is required, defendant denies the allegations.

11 87. Paragraph 87 consists of legal arguments or conclusions to which no response is
12 required. To the extent any response is required, defendant denies the allegations.

13 88. Paragraph 88 consists of legal arguments or conclusions to which no response is
14 required. To the extent any response is required, defendant denies the allegations.

15 89. Paragraph 89 consists of legal arguments or conclusions to which no response is
16 required. To the extent any response is required, defendant denies the allegations. Defendant
17 further denies that a class may be properly certified under Rule 23 (or any other rule).

18 90. Paragraph 90 consists of legal arguments or conclusions to which no response is
19 required. To the extent any response is required, defendant denies the allegations. Defendant
20 further denies that a class may be properly certified under Rule 23 (or any other rule).

21 91. Paragraph 91 consists of legal arguments or conclusions to which no response is
22 required. To the extent any response is required, defendant denies the allegations. Defendant
23 further denies that a class may be properly certified under Rule 23 (or any other rule).

24 **Second Cause of Action**

25 **Unjust Enrichment**

26 92. Defendants adopts and incorporates by references its response to Paragraphs 1-91
27 of the Complaint as if fully asserted herein.

28 93. Paragraph 93 consists of legal arguments or conclusions to which no response is

1 required. To the extent any response is required, defendant admits plaintiff purports to bring this
2 action as a class action and seeks to represent a purported class as stated, and defendant otherwise
3 denies the allegations in Paragraph 93. Defendant further denies that a class may be properly
4 certified under Rule 23 (or any other rule).

5 94. Paragraph 94 consists of legal arguments or conclusions to which no response is
6 required. To the extent any response is required, defendant denies the allegations.

7 95. Paragraph 95 consists of legal arguments or conclusions to which no response is
8 required. To the extent any response is required, defendant denies the allegations.

9 96. Paragraph 96 consists of legal arguments or conclusions to which no response is
10 required. To the extent any response is required, defendant denies the allegations.

11 97. Paragraph 97 consists of legal arguments or conclusions to which no response is
12 required. To the extent any response is required, defendant denies the allegations.

13 **Third Cause of Action**

14 **Conversion**

15 98. Defendants adopts and incorporates by references its response to Paragraphs 1-97
16 of the Complaint as if fully asserted herein.

17 99. Paragraph 99 consists of legal arguments or conclusions to which no response is
18 required. To the extent any response is required, defendant admits plaintiff purports to bring this
19 action as a class action and seeks to represent a purported class as stated, and defendant otherwise
20 denies the allegations in Paragraph 99. Defendant further denies that a class may be properly
21 certified under Rule 23 (or any other rule).

22 100. Paragraph 100 consists of legal arguments or conclusions to which no response is
23 required. To the extent any response is required, defendant denies the allegations in Paragraph
24 100. Defendant further denies that a class may be properly certified under Rule 23 (or any other
25 rule).

26 101. Paragraph 101 consists of legal arguments or conclusions to which no response is
27 required. To the extent any response is required, defendant denies the allegations. Defendant
28 further denies that a class may be properly certified under Rule 23 (or any other rule).

102. Paragraph 102 consists of legal arguments or conclusions to which no response is required. To the extent any response is required, defendant denies the allegations. Defendant further denies that a class may be properly certified under Rule 23 (or any other rule).

103. Paragraph 103 consists of legal arguments or conclusions to which no response is required. To the extent any response is required, defendant denies the allegations. Defendant further denies that a class may be properly certified under Rule 23 (or any other rule).

104. Paragraph 104 consists of legal arguments or conclusions to which no response is required. To the extent any response is required, defendant denies the allegations.

105. Paragraph 105 consists of legal arguments or conclusions to which no response is required. To the extent any response is required, defendant denies the allegations.

106. Paragraph 106 consists of legal arguments or conclusions to which no response is required. To the extent any response is required, defendant denies the allegations. Defendant further denies that a class may be properly certified under Rule 23 (or any other rule).

107. Paragraph 107 consists of legal arguments or conclusions to which no response is required. To the extent any response is required, defendant denies the allegations. Defendant further denies that a class may be properly certified under Rule 23 (or any other rule).

Fourth Cause of Action

Trespass to Chattel

108. Defendants adopts and incorporates by references its response to Paragraphs 1-107 of the Complaint as if fully asserted herein.

109. Paragraph 109 consists of legal arguments or conclusions to which no response is required. To the extent any response is required, defendant admits plaintiff purports to bring this action as a class action and seeks to represent a purported class as stated, and defendant otherwise denies the allegations in Paragraph 109. Defendant further denies that a class may be properly certified under Rule 23 (or any other rule).

110. Paragraph 110 consists of legal arguments or conclusions to which no response is required. To the extent any response is required, defendant denies the allegations. Defendant further denies that a class may be properly certified under Rule 23 (or any other rule).

111. Paragraph 111 consists of legal arguments or conclusions to which no response is required. To the extent any response is required, defendant denies the allegations. Defendant further denies that a class may be properly certified under Rule 23 (or any other rule).

112. Defendant denies the allegations in Paragraph 112.

113. Paragraph 113 consists of legal arguments or conclusions to which no response is required. To the extent any response is required, defendant denies the allegations in Paragraph 113. Defendant further denies that a class may be properly certified under Rule 23 (or any other rule).

114. Paragraph 114 consists of legal arguments or conclusions to which no response is required. To the extent any response is required, defendant denies the allegations. Defendant further denies that a class may be properly certified under Rule 23 (or any other rule).

115. Paragraph 115 consists of legal arguments or conclusions to which no response is required. To the extent any response is required, defendant denies the allegations. Defendant further denies that a class may be properly certified under Rule 23 (or any other rule).

116. Paragraph 116 consists of legal arguments or conclusions to which no response is required. To the extent any response is required, defendant denies the allegations. Defendant further denies that a class may be properly certified under Rule 23 (or any other rule).

PLAINTIFF'S PRAYER FOR RELIEF

Defendant denies that plaintiff is entitled to any of the requested relief, including class certification, judgment, attorneys' fees, costs, damages, restitution, declaratory or injunctive relief, interest, or any other relief of any kind, including without limitation, the relief sought in Paragraphs A through G of plaintiff's prayer for relief on pages 18-19 of the Complaint.

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1 Business & Professions Code §§ 17200 *et seq.*, because, on information and belief, they did not
2 suffer any injury as a result of any conduct by defendant.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 **(Statute of Limitations)**

5 Plaintiff and the putative class's claims are barred, in whole or in part, by the applicable
6 statute of limitations.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 **(Good Faith/Reasonable Belief as to Accuracy and Validity)**

9 Plaintiff and the putative class's claims are barred, in whole or in part, because any
10 representations or statements alleged to have been made by defendant were true and accurate at
11 the time made and/or were made in good faith and with reasonable belief that all of defendant's
12 conduct was lawful.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 **(No Damages)**

15 Plaintiff and the putative class's claims are barred, in whole or in part, because they have
16 not sustained any cognizable injury or damage under California Unfair Competition Law as a
17 result of the matters alleged in the Complaint.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 **(No Causation)**

20 Plaintiff and the putative class's claims are barred, in whole or in part, because any injury
21 or damages plaintiff and the putative class have sustained were not caused by defendant.

22 **NINTH AFFIRMATIVE DEFENSE**

23 **(Acts or Omissions of Third Parties)**

24 Plaintiff and the putative class's claims are barred, in whole or in part, because plaintiff
25 and the putative class's alleged damages and/or injury were proximately and solely caused by the
26 acts or omissions of third parties for whose conduct defendant is not responsible and/or who acted
27 outside the scope of the authority granted to them.

1 **TENTH AFFIRMATIVE DEFENSE**

2 **(Laches)**

3 Plaintiff and the putative class's claims are barred, in whole or in part, by the doctrine of
4 laches.

5 **ELEVENTH AFFIRMATIVE DEFENSE**

6 **(Unclean Hands)**

7 Plaintiff and the putative class's claims are barred, in whole or in part, by the doctrine of
8 unclean hands.

9 **TWELFTH AFFIRMATIVE DEFENSE**

10 **(Waiver and Estoppel)**

11 Plaintiff and the putative class's claims are barred, in whole or in part, by doctrines of
12 waiver and estoppel.

13 **THIRTEENTH AFFIRMATIVE DEFENSE**

14 **(Failure To Mitigate Damages)**

15 Plaintiff and the putative class's claims are barred, in whole or in part, because they failed
16 to mitigate damages, if any.

17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 **(Damages Speculative and Remote)**

19 The claims of plaintiff and the putative class are barred, in whole or in part, because the
20 damages sought are too speculative and remote.

21 **FIFTEENTH AFFIRMATIVE DEFENSE**

22 **(Punitive Damages)**

23 Defendant is entitled to the protections and limitations from the imposition of punitive
24 damages afforded under the United States Constitution and any applicable State Constitutions.

25 **SIXTEENTH AFFIRMATIVE DEFENSE**

26 **(Safe Harbor Doctrine)**

27 The claims of plaintiff and the putative class are barred, in whole or in part, by
28 California's safe-harbor doctrine because defendant's alleged actions, at all relevant times, were

1 in compliance with applicable law.

2 **SEVENTEENTH AFFIRMATIVE DEFENSE**

3 **(No Class Action)**

4 The claims of plaintiff and the putative class, in whole or in part, fail to meet the
5 necessary requirements for class certification, including, *inter alia*, class ascertainability,
6 typicality, commonality, numerosity, manageability, superiority, and adequacy of the class
7 representatives and/or counsel.

8 **EIGHTEENTH AFFIRMATIVE DEFENSE**

9 **(Adequate Remedy at Law)**

10 Injunctive relief in this matter is inappropriate because plaintiff and the putative members
11 of the purported class as set forth in the Complaint have an adequate remedy at law and/or the
12 requirements for granting injunctive relief cannot be satisfied.

13 **NINETEENTH AFFIRMATIVE DEFENSE**

14 **(No Jury Trial)**

15 Plaintiff and the putative members of the purported class as set forth in the Complaint are
16 not entitled to have equitable issues or matters of law tried to a jury, and plaintiff's demand for a
17 jury trial should be so limited.

18 **TWENTIETH AFFIRMATIVE DEFENSE**

19 **(Due Process)**

20 Any award of restitution under plaintiff's first cause of action pursuant to the California
21 Business & Professions Code §§ 17200 *et seq.* would violate the Excessive Fines and Due
22 Process Clauses of the United States and California Constitutions.

23 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

24 **(No Fraudulent or Unfair Practice)**

25 Plaintiff's cause of action under California Business & Professions Code §§ 17200 *et seq.*
26 is barred, in whole or in part, because defendant's alleged practices were not "fraudulent" or
27 "unfair," the public was not and would not likely have been deceived by any such alleged
28 practices, defendant would have gained no competitive advantage by engaging in such alleged

1 practices, and the benefits of the alleged practices outweighed any harm or other impact they
2 might have caused.

3 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

4 **(Legitimate Business Reasons)**

5 Plaintiff and the putative class's claims are barred, in whole or in part, to the extent that
6 the business practices alleged were carried out for legitimate business reasons.

7 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

8 **(Non-Actionable Statement)**

9 Plaintiff and the putative class's claims are barred, in whole or in part, to the extent any
10 claim is based on a non-actionable statement.

11 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

12 **(No Showing of Threatened Future Harm or Continuing Violation)**

13 Plaintiff and the putative class's request for an injunction fails to the extent they seek to
14 enjoin alleged events that have already transpired without the requisite showing of threatened
15 future harm or continuing violation.

16 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

17 **(First Amendment)**

18 Plaintiff and the putative class's claims are barred, in whole or in part, by the First
19 Amendment of the United States Constitution, and similar provisions in the Constitution of the
20 State of California, which protect, among other things, defendant's right to promote and advertise
21 its products. Defendant has asserted this defense to preserve its rights in the event that plaintiff
22 and the putative class contend that defendant's speech, commercial or otherwise, was improper or
23 that the Court should order defendant to engage in (or refrain from) protected speech.

24 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

25 **(Frivolous Claims)**

26 Plaintiff's claims, and each of them, brought on behalf of themselves and the putative
27 members of the purported class as set forth in the Complaint, or some of them, are frivolous,
28 unreasonable, or groundless, and accordingly, defendant should recover all costs and attorneys'

1 fees incurred herein.

2 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

3 Defendant may have additional defenses available, which are not now fully known and of
4 which it is not now aware. Defendant reserves all defenses under Fed. R. Civ. P. 8 and 12, and
5 the right to assert any additional defenses and avoidances that may arise as discovery progresses
6 or otherwise in the course of litigation.

7 **WHEREFORE**, defendant prays for relief and judgment as follows:

- 8 1. That this suit cannot be maintained as a class action;
- 9 2. That all the causes of action be dismissed with prejudice;
- 10 3. That plaintiff takes nothing by way of the Complaint;
- 11 4. That defendant be awarded costs of suit and attorneys' fees herein; and
- 12 5. That the Court order such other and further relief for defendant as the Court may
13 deem just and proper.

14
15 DATED: October 17, 2022

Respectfully submitted,

16 /s/ Carlos M. Lazatin

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Sherin Parikh